

UNITED STATES CIVIL SERVICE COMMISSION
Office of the Executive Director
Interagency Advisory Group
1900 E Street, N.W.
Washington, D.C. 20415

Minutes of the Meeting of the IAG Committee on Adverse Actions
June 17, 1977

Wilma Lehman chaired the meeting in the absence of Reg Jones who is on vacation.

Pending Legislation

CSC has submitted a report to OMB on H.R. 3793 (Spellman), the "Right to Counsel" bill. OMB plans to submit the Commission's report to agencies for comment. The Commission report is not favorable. Hearings are scheduled for July 20 and July 21, 1977; CSC is to give testimony.

H.R. 6225 (Schroeder), on "Pretermination Hearings," is another repeat from last session. CSC objected to the bill last year. CSC's report should be ready early next week and we assume that OMB will send it out to agencies for comment. Hearings are scheduled for July 28 and August 2, 1977; it is expected the Commission will testify.

Civil Service Rules

Mrs. Lehman reported that the Policy Analysis and Development Division has been asked to examine the Civil Service Rules to determine if any changes are needed and to update and provide consistency of policy. Members were invited to submit suggestions for consideration by the Division.

Retroactive Temporary Promotions Exceeding Two Years

In applying the Turner-Caldwell decision (B-183086), some agencies found that employees were detailed to higher graded positions for more than two years. They have asked whether under these circumstances, adverse action procedures must be followed when an employee is given a retroactive temporary promotion in accordance with the Turner-Caldwell decision and then returned to his or her permanent position. Mrs. Sugar stated that BPS has determined that adverse action procedures should not apply when the employee is returned immediately to his or her permanent position. The retroactive temporary promotion is the action used to correct an administrative error and provide documentation that the service was performed to permit backpay. She stated that this is different from a conscious decision to promote temporarily on a prospective basis. However, adverse action procedures would apply if the employee is not returned to his or her

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position immediately after the retroactive temporary promotion is authorized. A bulletin will be issued immediately (752 series) to supplement information previously provided in Bulletin 300-40.

Collateral Duties And Reduction In Rank Appeals

Mrs. Lehman announced that FPM Letter 713-37 dated May 20, 1977, contains clarification of Commission policy relative to collateral duties. The letter is important because of the possibility of a reduction in rank appeal when collateral duties are not clearly identified and are withdrawn. pme

CSC Policy On Reprisal And Coercion

Mrs. Lehman advised the group that she had been asked to elicit the opinions of the members as to whether or not Commission policy on reprisal and coercion as elements in adverse action proceedings needs to be reviewed. The consensus was that no changes are warranted at this time, as the current policy presented no particular problem to the agencies.

Digesting Of Cases

Mrs. Lehman asked the members for their comments on their experience with the Commission's case digests. The members generally felt that the digests were useful and that "sanitization" should be continued to protect the privacy of employees. It was suggested, however, that the digests should accurately reflect the case decision, especially when a case is decided on the basis of agency regulation. It was also strongly recommended that each issuance of the "Digest of Significant Decisions" carry a statement concerning its use similar to the following which is part of the introduction to the Index:

"Care should be exercised in using the Index and applying decisions for precedent purposes, since cases, although similar on their face are often distinguishable based on the absence or addition of certain factual elements that may dictate a different decision. In addition some case decisions may rest upon published regulation or policies that are no longer controlling as a result of subsequent regulatory or policy issuances. In some cases a decision may rest upon an agency regulatory or policy issuance or union and agency negotiated agreement containing provisions not in conflict with or contrary to Commission regulation or policies, which may grant additional procedural rights to an appellant."

Conflict Of Interest Regulations

Jeanette Neville informed the members that the Commission's recently published (Nov. 2, 1976) regulations governing conflict of interest in employee's choice of representative in appeals before the FEAA had been upheld by the U.S. District Court in Puerto Rico in the case of Pedro Alberio, et al. v. Robert E. Hampton, et al., 76-426, May 20, 1977.

Mrs. Neville said that in deciding this case the judge held that:
1) the right of an employee to a representative in an FEAA proceeding is not absolute but is subject to CSC regulations; 2) an administrative body has the right to assure that the parties to an appeal are free of conflict of interest; 3) there was no showing that limitation of Alberio's right to representative does not comport with due process; and 4) union representation of Alberio before the FEAA would jeopardize efficient administration of the U.S. Customs Service.

Classification Appeals

Mrs. Neville told the group that the Commission is taking a hard look at the purview of the Commission's classification appeal procedure including possible remedies available to employees who allege misclassification of their positions, misassignment of duties, etc. We are close to resolution on several points and plan a further discussion at next month's meeting. W

Appeal Procedures For The "Handicapped"

There was a brief discussion of draft provisions for appeals by employees or applicants who allege discrimination on the basis of physical or mental handicap, as defined by the Rehabilitation Act. The conclusion was drawn that there needs to be a more specific definition of "handicap" than is used in the BRE paper.

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